TAN LIAN HONG v. MIN NGAI KNITTING FACTORY (M) LTD. & ANOR.

[O.C.J. (Chang Min Tat J.) December 7, 1973]
[Penang — Civil Suit No. 195 of 1973]

Practice and Procedure — Entry of appearance — Whether solicitors for insurers of employers can enter appearance for employee without instruction — Whether appearance should be set aside.

Advocates & Solicitors — Solicitor entering appearance without instruction — Whether can be challenged by other party — Whether appearance can stand or should be set aside.

In this case the plaintiff had bought an action for damages for negligence against her employers, the first defendant, and a fellow-worker, the second defendant. The allegation was that the injuries sustained by the plaintiff were caused by the negligence of the second defendant. The second defendant had been dismissed by the employer and could not be traced. Solicitors retained by the insurers of a Workman's Compensation policy entered appearance for the first defendant and also for the second defendant. The plaintiff objected to the entry of appearance on behalf of the second defendant on the ground of want of authority.

Held: the plaintiff was entitled to challenge the authority of the solicitor who purported to act for the second defendant and in the circumstances of this case the appearance of the second defendant must be set aside.

Cases referred to:-

(1) *Re Gray, Gray* v. *Coles* (1891) 65 L.T. 743.
(2) *Yonge* v. *Toynbee* [1910] 1 K.B. 215, C.A.
(3) *The Neptune* [1919] P. 21.

CIVIL SUIT.

Ajmer Singh Sandhu for the plaintiff.
Goh Cheng Lok for the defendants.

Chang Min Tat J.: This is an action for damages for negligency by a worker. The employer was necessarily a party, and in the action was cited as the first defendant. The plaintiff also joined as a co-defendant a fellow-worker whose action caused her the injuries.

The statement of claim alleged that the injuries were caused when the second defendant restarted the engine at a time when the plaintiff in the course of her duties had her fingers in the area between 2 rollers. The physical result was, *inter alia*, a loss of 2 fingers.

Both the plaintiff and the second defendant were trainees. The second defendant was sued as the agent or servant of the first defendant.

A consequence of the accident is that the second defendant is now untraced, possibly as the result of dismissal from the factory. No authority to act for her was therefore given by her either in writing or orally to the solicitors who entered an appearance gratis for her as well as the first defendant and who were obviously retained by the insurers of a Workman's Compensation policy.

Objection is now taken by the plaintiff to the entry of appearance on the ground of want of authority. The reasons for so doing are transparent enough. It is not a question of selfless devotion to rules. It is purely tactical. If the second defendant does not appear or defend, then the way is cleared for a default judgment, which without any negligence on its own part, the first defendant must satisfy. Her appearance must be improbable since the next stage would be an application for substituted service on her which would be ordered but which it is doubted would be factually sufficient to bring the action to her notice.

But surely, further consideration would have shown how futile this line of attack was. If the appearance had been allowed to stand, it must be a matter of extreme doubt that the second defendant would be present to give evidence and the same result would have been achieved.

But my duty is to listen to such objections whenever they are made and to give my decision on the law.

Learned counsel for the first defendant maintains that the insurers have contractually the control of the proceedings and could therefore enter an appearance for the second defendant. His first proposition is undoubted but with respect, it seems to me that his second is fallacious. The contractual relationship of the insurers is with the insured. The insurers could, I should imagine, compel the insured to give control of the proceedings to them. There could ordinarily be no objection on the part of the insured, since the insurers were going to be the pay-masters. The insurers then have a right to conduct the litigation on behalf of the assured. But there is no contractual relationship between the insurers and the other servants of the insured and the right does not extend to their cases.

Ex hypothesi, a solicitor can act for their clients only on their instructions. If he acts for someone without instructions, that someone has a clear right to have the appearance vacated: *Re. Gray, Gray* v. *Coles*,(1) *Yonge* v. *Toynbee*,(2) and *The Neptune*.(3)

With respect, not untinged with regret, I take the further view that a solicitor's authority is challengeable by a litigant against whom he purports to act without authority for a party.

I therefore make the order setting aside the appearance of the second party with costs against the solicitor who entered the appearance.

Order accordingly.

Solicitors: *Ajmer Singh Sandhu & Zakaria; Goh Cheng Lok & Co.*